Ibrahim bin Ismail & Anor v Hasnah bte Puteh Imat (as beneficiary and legal mother of Bakri bin Yahya and substituting Yahaya bin Ibrahim) & Anor and another appeal

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEALS NO A–04–15 OF 1999 AND A–04–27 OF 1999
GOPAL SRI RAM AND BAHARUDIN SHAH JJCA AND ZALEHA ZAHARI J
1 NOVEMBER 2003

Civil Law Act — Damages — Loss of earnings — Statutory multiplier — Whether court may interfere with the fixed statutory multiplier in the calculation of loss of earnings in dependency and personal injury claims — Civil Law Act 1956 ss 7(3)(iv)(d), 28A (2)(d)(i)

Civil Procedure — Judicial Precedent — Court of Appeal — Hierarchy of courts — Personal injury or fatal accident claims — Whether Court of Appeal may refuse to follow majority decision of then Supreme Court in a personal injury or fatal accident claim — Majority decision of Supreme Court obviously wrong — Whether open for Court of Appeal to so find

Damages (Personal injury or death) — Action for — Dependency claim — Statutory multiplier — Whether court may interfere with the fixed statutory multiplier in the calculation of loss of earnings in dependency claims — Civil Law Act 1956 ss 7(3)(iv)(d), 28A(2)(d)(i)

Damages (Personal injury or death) — Action for — Personal injuries — Statutory multiplier — Whether court may interfere with the fixed statutory multiplier in the calculation of loss of earnings in personal injury claims — Civil Law Act 1956 ss7(3)(iv)(d), 28A(2)(d)(i)

Statutory interpretation — Construction of statutes — Rules of construction — Language of statute — Language of statute imperative — Whether court may disregard mandatory nature of phrase in statute when interpreting such phrase

Statutory interpretation — Construction of statutes — Rules of construction — Prevalence of specific over general provisions — Prevalence of specific statutory formula over common law — Specific statutory formula prescribed to meet particular mischief at common law — Whether court may continue to apply common law in disregard of statute

Both these unconnected cases presented an almost identical question for the Court of Appeal's determination. The question was whether a court in a running down action, whether resulting in death or personal injury has authority to reduce the multiplier below the limit prescribed by ss 7 and 28A respectively of the Civil Law Act 1956 ('the Act'). The first case concerned both an appeal and a cross appeal. The appeal was by the defendant (at first instance) against the failure of the sessions court (trial court) and High Court (intermediate appellate court) to reduce the damages for bereavement despite a finding of contributory negligence against the deceased. The cross appeal by the plaintiff related to the High Court's reduction of the multiplier of

16years awarded by the sessions court and prescribed by s 7(3)(iv)(d) of the Act. In the second case, the sessions court made an award for the plaintiff's loss of future earnings by applying the statutory multiplier set out in s 28A(2)(d)(i) of the Act. The High Court intervened and reduced the multiplier by a further 1/3. The plaintiff appealed. In deciding the question posed by both appeals, the Court of Appeal had to inter alia determine the correctness of the majority decision of the then Supreme Court in *Chan Chin Ming v Lim Yok Eng* [1994] 3 MLJ 233, which hitherto stood as authority that a court may reduce the pre-determined statutory multiplier applicable in the calculation of loss of earnings in dependency and personal injury claims.

Held, allowing the appeal and the cross appeal in the first case and the appeal in the second case:

(1) The majority decision in *Chan Chin Ming* was wrong. It was the powerful dissenting decision (of Edgar Joseph Jr SCJ) that stated the law correctly. The majority in *Chan Chin Ming* failed to apply the appropriate guide to statutory interpretation and hence fell into error. What the majority addressed was the practice of making multiplier deductions prevalent in respect of dependency claims made by parents prior to the amendments. However, the correct position is that there was no mandatory rule for deductions of the extent referred to by the majority. More importantly, this was not the target of parliamentary intervention. The majority ought to have addressed the object or purpose of the amendments introduced by Parliament by way of ss 7(3) and 28A, which was to address the very high award of damages for personal injuries and death (see paras 4, 7, 8 and 9); *Chan Chin Ming v Lim Yoke Eng* [1994] 3 MLJ 233 (majority not followed).

(2) It is a cardinal guide of statutory interpretation that when a statute lays down a specific code or formula to meet a particular mischief of the common law, it is not open to the courts to treat themselves as at liberty to continue to apply the common law in disregard of statute. It was this very principle that the majority in *Chan Chin Ming* breached when purporting to interfere with the pre-determined statutory formula applicable in the calculation of loss of earnings in dependency and personal injury claims. The majority in *Chan Chin Ming* were thus exercising legislative and not interpretive jurisdiction (see paras 10 and 11); *The Governor and Company of the Bank of England v Vagliano Brothers* [1891] AC 107 followed.

(3) The majority in *Chan Chin Ming* also overlooked the point that the language of the statute is imperative. It says that 'the number of years purchase *shall* be 16'. The mandatory tenor of the phrase employed by Parliament to convey its message excludes any pretended exercise of judicial power to substitute some other multiplier for that intended. The result may be unfair to insurers of vehicles. But that is irrelevant (see para 12); *Vacher & Sons Ltd v London Society of Compositors* [1913] AC 107 followed.

(4) The Court of Appeal was entitled to depart from *Chan Chin Ming* since it was wrongly decided by the majority. *Chan Chin Ming* was decided at a point of time when the High Court had original jurisdiction over personal injury and fatal accident claims. Appeals were then preferred to the Supreme Court which stood at the apex of the judicature. However today, the Court of Appeal stands at the apex of personal injury and fatal accident claims. Thus if a decision of the former Supreme Court is obviously wrong, it would be the duty of the Court of Appeal to say so (see para 16); *Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd* [2002] 4All ER 689 followed ; *Solle v Butcher* [1949] 2 All ER 1107 and *Young v Bristol Aeroplane Co Ltd* [1944] 2 All ER 293 referred.

(5) In the first case, the courts below were clearly wrong in failing to reduce the damages for bereavement despite a finding of contributory negligence against the deceased. The defendant's appeal in this regard was therefore irresistible and should be allowed. The plaintiff's cross appeal against the reduction of the multiplier by the High Court was equally irresistible and should be allowed. *Chan Chin Ming* (the majority) did not say that there must be a reduction of the multiplier in every case. All it says is that despite the imperative statutory direction it was still possible in a given case for a court to substitute a multiplier of less than 16. There was thus no duty on the High Court to reverse and reduce the multiplier in any event. The High Court would not have infringed stare decisis if it had declined interference. In the second case, it was illegal for the High Court to intervene and further reduce by 1/3 the statutory multiplier. The plaintiff's appeal should therefore be allowed (see paras 18, 19, 20 and 21).

Per curiam:

(1) It is common knowledge that the object and purpose of the amendments introduced by Parliament by way of ss 7(3) and 28A was to address the very high award of damages for personal injuries and death which resulted from these three causes: (i) the application of a flexible multiplier based on the facts and circumstances of each case — one could get a multiplier in excess of 16 years for a plaintiff or deceased who was below the age of majority; (ii) the admission of an award for 'lost years' — resulting in loss of future earnings being handed down in favour of non-employed injured plaintiffs or the estate of deceased victims and very young children receiving huge awards based on their future prospects (see *Yang Salbiah & Anor v Jamil bin Harun* [1981] 1 MLJ 292; *Chiang Boon Fatt v Lembaga Kemajuan Negeri Pahang & Anor, Chin Yee Thow v Lembaga Kemajuan Negeri Pahang & Anor* [1983] 1 MLJ 89; (iii) a claim for loss of future earnings being maintained by a person who had attained or exceeded the age of 55 years (see *Tan Kheng Kuan v Lim Cheng Teik* [1965] 1 MLJ 116 (see para 9).

(2) It is settled beyond doubt that when calculating the loss of dependency under s 7 or the loss of future earnings under s 28A, the prescribed statutory multiplier is to be applied directly. Resort to the annuity tables

previously used is no longer permissible (see *Marappan & Anor v Siti Rahmah bte Ibrahim* [1990] 1 MLJ 99; *Hum Peng Sin v Lim Lai Hoon* [2001] 4 MLJ 232) (see para 23).

[**Bahasa Malaysia summary**

Kedua-dua kes ini yang tidak berkait telah mengemukakan persoalan yang sama untuk keputusan Mahkamah Rayuan. Persoalannya adalah sama ada mahkamah di dalam tindakan kemalangan, sama ada mengakibatkan kematian ataupun kecederaan mempunyai kuasa untuk mengurangkan pengganda di bawah tahap yang diperuntukkan oleh oleh ss 7 dan 28A Akta Undang-Undang Sivil 1956 ('Akta itu'). Kes pertama berkenaan rayuan dan rayuan balas. Rayuan itu oleh defendan (dahulunya) terhadap kegagalan mahkamah sesyen (mahkamah perbicaraan) dan Mahkamah Tinggi (mahkamah rayuan pertengahan) untuk mengurangkan ganti rugi untuk kematian walaupun terdapat keputusan kecuaian sertaan terhadap si mati. Rayuan balas oleh plaintif berkenaan pengurangan pengganda 16 tahun oleh Mahkamah Tinggi yang diawardkan oleh mahkamah sesyen dan diperuntukkan oleh s 7(3)(iv)(d) Akta itu. Di dalam kes kedua, mahkamah sesyen telah membuat award untuk kehilangan mata pencarian masa depan plaintif dengan menggunakan pengganda undang-undang seperti yang diperuntukkan di dalam s 28A(2)(d)(i) Akta itu. Mahkamah Tinggi telah mencampur tangan dan mengurangkan pengganda itu sebanyak 1/3 lagi. Plaintif merayu. Di dalam memutuskan persoalan kedua-dua rayuan itu, Mahkamah Rayuan telah, antara lain, menentukan ketepatan keputusan majoriti Mahkamah Agung ketika itu di dalam *Chan Chin Ming v Lim Yok Eng* [1994] 3 MLJ 233, yang merupakan autoriti bahawa mahkamah boleh mengurangkan pengganda undang-undang yang telah ditetapkan yang digunakan di dalam pengiraan kehilangan mata pencarian di dalam tuntutan wilayah tanggungan dan kecederaan.

Diputuskan, membenarkan rayuan dan rayuan balas di dalam kes pertama dan rayuan di dalam kes kedua:

(1) Keputusan majoriti di dalam *Chan Chin Ming* adalah salah. Ia merupakan penghakiman menentang (Edgar Joseph Jr HMA) yang menyatakan undang-undang dengan betul. Majoriti di dalam *Chan Chin Ming* gagal memakai petunjuk-petunjuk kepada tafsiran undang-undang dan oleh itu telah khilaf. Apa yang telah dikatakan oleh majoriti adalah amalan mengurangkan pengganda berkait dengan tuntutan penanggungan oleh ibu bapa sebelum pindaan-pindaan. Walau bagaimanapun, keadaan yang betul adalah tiada kaedah mandatori untuk pengurangan yang dirujuk oleh majoriti. Apa yang lebih penting adalah ini bukan tujuan Parlimen mencampur tangan. Majoriti sepatut menyatakan mengenai tujuan pindaan-pindaan oleh Parlimen melalui ss 7(3) dan 28A yang menyatakan tentang award-award ganti rugi yang tinggi untuk kecederaan dan kematian (lihat perenggan-perenggan 4, 7, 8 dan 9); *Chan Chin Ming v Lim Yok Eng* [1994] 3MLJ 233 (keputusan majoriti tidak diikut).

(2) Ia merupakan petunjuk utama tafsiran undang-undang bahawa apabila undang-undang menetapkan kanun yang khusus atau formula untuk sesuatu khianat common law, mahkamah tidak boleh terus memakai common law tanpa menghirau undang-undang. Prinsip ini yang telah dilanggar oleh majoriti di dalam *Chan Chin Ming* apabila mereka mencampur tangan dalam formula undang-undang yang telah ditetapkan untuk dipakai di dalam pengiraan kehilangan mata pencarian di dalam tuntutan tanggungan dan kecederaan. Majoriti di dalam *Chan Chin Ming* telah melaksanakan bidang kuasa perundangan dan bukan kehakiman (lihat perenggan-perenggan 10 dan 11); *The Governor and Company of the Bank of England v Vagliano Brothers* [1891] AC 107 diikut .

(3) Majoriti di dalam *Chan Chin Ming* telah terlepas perhatian yang bahasa undang-undang adalah penting. Ia menyatakan 'the number of years purchase shall be 16'. Maksud mandatori frasa yang digunakan oleh Parlimen untuk memberi maksudnya tidak termasuk penggunaan kuasa kehakiman untuk menggantikan pengganda lain bagi yang telah ditetapkan. Keputusan ini mungkin tidak adil untuk penginsurans kenderaan. Tetapi itu tidak relevan (lihat perenggan 12); *Vacher & Son Ltd v London Society of Compositors* [1913] AC 107 diikut.

(4) Mahkamah Rayuan tidak perlu mengikut *Chan Chin Ming* memandangkan penghakiman kes itu oleh majoriti salah. *Chan Chin Ming* telah diputuskan pada masa apabila Mahkamah Tinggi mempunyai bidang kuasa asal ke atas tuntutan kecederaan dan kemalangan maut. Rayuan-rayuan kemudian dibuat ke Mahkamah Agung yang adalah mahkamah yang paling tinggi di kehakiman. Sekarang, Mahkamah Rayuan adalah mahkamah paling tinggi untuk tuntutan kecederaan dan kemalangan maut. Oleh itu, jika keputusan Mahkamah Agung terdahulu adalah salah, ia menjadi tanggungjawab Mahkamah Rayuan untuk menyatakan sedemikian; *Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd* [2002] 4 All ER 689 diikut (lihat perenggan 16); *Solle v Butcher* [1949] 2 All ER 1107 dan *Yong v Bristol Aeroplane Co Ltd* [1944] 2 All ER 293 dirujuk .

(5) Di dalam kes pertama, mahkamah sebelum ini telah salah kerana gagal mengurangkan ganti rugi untuk kematian walaupun terdapat kecuaian sertaan terhadap si mati. Rayuan defendan berkenaan ini patut dibenarkan. Rayuan balas plaintif terhadap pengurangan pengganda oleh Mahkamah Tinggi juga patut dibenarkan. *Chan Chin Ming* (majoriti) tidak menyatakan bahawa mesti terdapat pengurangan pengganda didalam setiap kes. Apa yan dikatakan dalam kes itu adalah walaupun terdapat arahan undang-undang yang penting mahkamah masih boleh di dalam kes-kes tertentu menggantikan pengganda kurang daripada 16. Tiada tangungjawab pada mahkamah untuk mengakaskan dan mengurangkan pengganda. Mahkamah Tinggi tidak akan melanggar stare decisis jika mahkamah itu enggan campur tangan. Di dalam kes kedua, ia adalah melanggar undang-undang untuk Mahkamah Tinggi untuk campur tangan dan mengurangkan pengganda undang-undang sebanyak 1/3 lagi. Rayuan plaintif patut dibenarkan (lihat perenggan-perenggan 18, 19, 20 dan 21).

Per curiam

(1) Ia adalah pengetahuan umum bahawa tujuan pindaan-pindaan oleh Parlimen melalui ss 7(3) dan 28A adalah untuk award-award ganti rugi yang sangat tinggi untuk kecederaan dan kematian yang diakibatkan oleh sebab-sebab ini: (i) permohonan untuk pengganda yang fleksibel berdasarkan fakta-fakta dan keadaan kes – seseorang boleh mendapatkan pengganda yang lebih daripada 16 untuk plaintif atau si mati yang berumur kurang daripada umur dewasa; (ii) kebenaran award untuk 'lost years' – yang mengakibatkan kehilangan mata pencarian masa depan yang diberi kepada plaintif-plaintif yang tidak bekerja atau estet si mati dan kanak-kanak yang sangat muda menerima award-award yang besar pada prospek masa depan (lihat *Yang Salbiah & Anor v Jamil bin Harun* [1981] 1 MLJ 292; *Chiang Boon Fatt v Lembaga Kemajuan Negeri Pahang & Anor, Chin Yee Thow v Lembaga Kemajuan Negeri Pahang & Anor* [1983] 1 MLJ 89); (iii) tuntutan untuk kehilangan mata pencarian masa depan yang dikekalkan oleh seorang yang berumur atau berumur lebih daripada 55 tahun (lihat *Tan Kheng Kuan v Lim Cheng Teik* [1965] 1 MLJ 116 (lihat perenggan 9).

(2) Ia telah diselesaikan melampaui keraguan bahawa apabila membuat pengiraan di bawah s 7 atau kehilangan mata pencarian masa depan di bawah s 28A, pengganda undang-undang yang diperuntukkan mesti dipakai terus. Penggunaan jadual anuiti yang digunakan dahulu tidak lagi terpakai (lihat *Marappan & Anor v Siti Rahmah bte Ibrahim* [1990] 1 MLJ 99; *Hum Peng Sin v Lim Lai Hoon* [2001] 4 MLJ 232 (lihat perenggan 23).]

Notes

For cases on loss of earnings, see 1 *Mallal's Digest* (4th Ed, 2002 Reissue) para 3309.

For cases on dependency claims, see 6 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 263–265.

For cases on personal injuries, see 6 *Mallal's Digest* (4th Ed, 2002 Reissue) para 277.

For cases on the Court of Appeal, see 2(2) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 3597–3601.

For cases on rules of construction, see 11 *Mallal's Digest* (4th Ed, 2002 Reissue) para 1863–1878.

Cases referred to

Chan Chin Ming & Anor v Lim Yok Eng [1994] 3 MLJ 233 (not folld)

Chiang Boon Fatt v Lembaga Kemajuan Negeri Pahang & Anor; Chin Yee Thow v Lembaga Kemajuan Negeri Pahang & Anor [1983] 1 MLJ 89 (refd)

Governor and Company of the Bank of England, The v Vagliano Brothers [1891] AC 107 (folld)

Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd, The Great Peace [2002] 4 All ER 689 (folld)

A *Hum Peng Sin v Lim Lai Hoon & Anor* [2001] 4 MLJ 232 (refd)
Marappan & Anor v Siti Rahmah bte Ibrahim [1990] 1 MLJ 99 (refd)
Societie Banque v Girdhari 1940 AIR PC 90 (refd)
Solle v Butcher [1949] 2 All ER 1107 (refd)
Takong Tabari v Government of Sarawak & Ors and another appeal [1998] 4 MLJ 512 (refd)
B *Tan Kheng Kuan v Lim Cheng Teik & Ors* [1965] 1 MLJ 116 (refd)
Vacher & Sons, Limited v London Society of Compositors [1913] AC 107 (folld)
Yang Salbiah & Anor v Jamil bin Harun [1981] 1 MLJ 292 (refd)

Legislation referred to

C Civil Law Act 1956 ss 7(3)(iv)(d), 28A(2)(d)(i)

VK Dasaratharaj (VP Nathan & Partners) for the appellants.
Baldev Singh (Syarikat Baldev Bhar) for the respondents.
Harbans Singh (Dalgit Singh with him) (Gurdev, Dalgit, Su & Co) for the appellants.
D *K Selvanayagam (L Fernandez & Co) for the respondents*

Appeal from: Civil Suit No 53–157 of 1993 (Sessions Court, Taiping), Civil Appeal No 12–65 of 1998 (High Court, Ipoh)

E **Gopal Sri Ram JCA** (delivering judgment of the court):

[1] These two appeals came up before us on the same list. Their facts are unconnected. But they have a common; almost identical point of law. It has to do with whether a court in a running down action, whether resulting in death or personal injury has authority to reduce the multiplier below the F limit prescribed by ss 7 and 28A respectively of the Civil Law Act 1956. Section 7 has to do with the damages recoverable in a fatal accident claim. Section 28A deals with damages recoverable for the loss of future earnings in a personal injuries claim. It is important to reproduce the relevant portion of each of these sections.

G **[2]** Section 7(3) in so far as is material reads:

> The damages which the party who shall be liable under subsection (1) to pay to the party for whom and for whose benefit the action is brought shall, subject to this section, be such as will compensate the party for whom and for whose benefit the action is brought for any loss of support suffered together with any reasonable H expenses incurred as a result of the wrongful act, neglect or default of the party liable under subsection (1).
>
> Provided that —
>
> (iv) in assessing the loss of earnings in respect of any period after the death of a person where such earnings provide for or contribute to the damages under I this section the Court shall -
>
> (a) take into account that where the person deceased has attained the age of fifty five years at the time of his death, his loss of earnings for any

period after his death shall not be taken into consideration; and in the case of any other person deceased, his loss of earnings for any period after his death shall be taken into consideration if it is proved or admitted that the person deceased was in good health but for the injury that caused his death and was receiving earnings by his own labour or other gainful activity prior to his death;

(b) take into account only the amount relating to the earnings as aforesaid and the Court shall not take into account any prospect of the earnings as aforesaid being increased at any period after the person's death;

(c) take into account any diminution of any such amount as aforesaid by such sum as is proved or admitted to be the living expenses of the person deceased at the time of his death;

(d) take into account that in the case of a person who was of the age of thirty years and below at the time of his death, the number of years' purchase shall be 16; and in the case of any other person who was of the age range extending between thirty one years and fifty four years at the time of his death, the number of years' purchase shall be calculated by using the figure 55, minus the age of the person at the time of death and dividing the remainder by the figure 2.

[3] Section 28A(2)(d) reads as follows:

(2)(d) in assessing damages for loss of future earnings the court shall take into account that —

(i) in the case of a person who was of the age of thirty years or below at the time when he was injured, the number of years' purchase shall be 16; and

(ii) in the case of any other person who was of the age range extending between thirty one years and fifty four years at the time when he was injured, the number of years' purchase shall be calculated by using the figure 55, minus the age of the person at the time when he was injured and dividing the remainder by the figure 2.

[4] We emphasize that both ss 7 and 28A use the phrase 'shall be 16' when fixing the multiplier. Can a court reduce this further, to say, 10 years? A majority of the Supreme Court in *Chan Chin Ming & Anor v Lim Yok Eng* [1994] 3 MLJ 233 answered that question in the affirmative. But Edgar Joseph Jr SCJ, a most learned judge whose judgments are entitled to great respect, registered a powerful dissent. In our considered judgment, the majority in that case were wrong. It is the dissent that states the law correctly. We will now state the reasons for our conclusion.

[5] Chan *Chin Ming* was a case where the victim of the road accident died. It was therefore a case that fell under s 7. The deceased in that case was 25 years at the date of the accident. He was unmarried. His mother brought a claim for loss of support. At the trial, the defendants conceded that using the statutory formula set out in s 7(3), a multiplier of 16 representing the years of purchase had to be applied. On appeal by the defendant on quite another point (not relevant here) a majority of the Supreme Court treated the concession as an erroneous admission on a point of law. Relying on the

authority of *Societie Banque v Girdhari* 1940 AIR PC 90, it took the view that it was not bound by such an admission. It then went on and reduced the statutory multiplier from 16 to 7.

[6] Peh Swee Chin SCJ (with whom Dzaiddin SCJ agreed) gave the following reasons for his decision at pp 243–244:

> Having regard to the state of the general system of the law before the coming into force of sub-para (d) on 1 October 1984, sub-para (d) seems to be tailor-made for a claim by a spouse and children as dependants in respect of a deceased spouse, because under the general system of law, both before and after the enactment of sub-para (d), the duration of a claim for loss of support is usually as long as the deceased's loss of earnings which would have been earned had the deceased lived.
>
> On the other hand, the state of the general system of law relating to a parent's claim as a dependant for loss of support in respect of an unmarried child before the enactment of sub-para (d) was that such loss of support would either cease or be reduced considerably on the almost invariable contingency of subsequent marriage of such unmarried child. If the learned judge was right, it would mean that this aspect of the law was swept away or changed.
>
> There is one important principle of statutory interpretation which has been applied repeatedly over the years. It is this, that it is in the highest degree improbable that Parliament would depart from the general system of law without expressing its intention with irresistible clearness. I find such clearness missing. To give an example, Britain's Courts of Judicature Act 1873 [*sic*] provided that an injunction might be granted in all cases in which the court considered it 'just and convenient', it was held by the House of Lords in *Beswick v Beswick* [1968] AC 58, [1967] 2All ER 1197, [1967] 3 WLR 932 to the effect that such general words would still mean that such injunction might be granted only in the usual infringement of recognized legal or equitable right. In other words, it is a fairly strong presumption against alteration in the law except with such irresistible clearness expressed.
>
> I do not think it will come to this that arguments on this question of interpretation are evenly balanced, and if it were so, I would agree also 'that interpretation should be chosen which involves the least alteration of the existing law', per Lord Reid in *George Wimpey & Co Ltd v British Overseas Airways Corp* [1955] AC 169 at p 191; [1954] All ER 661 at pp 672–673; [1954] 3 WLR 932 at p 947.
>
> In the result, I am unable to agree with the view of the learned trial judge that sub-para (d) [of s 7(3) of the Act] applied to the claim in the instant case, ie the claim of a parent as dependant for loss of support in respect of a deceased unmarried child.
>
> I, therefore, agree with the contention of the learned counsel for the defendants that the number of years' purchase should be reduced and I hereby reduce it to seven years, after taking into account the contingencies and circumstances in this case.

[7] With respect, the majority failed to apply the appropriate guide to statutory interpretation and hence fell into error. What the majority addressed was the practice of making multiplier deductions prevalent in respect of dependency claims made by parents prior to the amendments. But the correct position is that there was no mandatory rule for deductions of the extent

referred to by the majority. And more importantly, this was not the target of parliamentary intervention.

[8] In our respectful view, the majority ought to have addressed the object or purpose of the amendments introduced by Parliament by way of ss 7(3) and 28A. Had it done so, it would have discovered the mischief that Parliament was targeting for cure.

[9] Now, it is common knowledge that Parliament's purpose was to address the very high award of damages for personal injuries and death. This resulted from three causes. First, the application of a flexible multiplier based on the facts and circumstances of each case. So, one could get a multiplier in excess of 16 years for a plaintiff or deceased who was below the age of majority. Second, the admission of an award for 'lost years'. As a result awards for loss of future earnings were frequently handed down in favour of non-employed injured plaintiffs or the estate of deceased victims. Very young children received huge awards based on their future prospects. In *Yang Salbiah & Anor v Jamil bin Harun* [1981] 1 MLJ 292, for example, a 7 year old girl who had become vegetative was awarded a sum on excess of RM30,000 for loss of future earnings based on a multiplier of 25 years purchase. Again, in *Chiang Boon Fatt v Lembaga Kemajuan Negeri Pahang & Anor; Chin Yee Thow v Lembaga Kemajuan Negeri Pahang & Anor* [1983] 1 MLJ 89, the dependants of a youth who was killed in an accident just as he was about to enter university were awarded RM15,000 as loss of dependency for the lost years on a multiplier of 5 years purchase based on a predicted income he never earned. Third, a person who had attained or exceeded the age of 55 years could claim for loss of future earnings. Thus, in *Tan Kheng Kuan v Lim Cheng Teik & Ors* [1965] 1 MLJ 116 a 56 year old plaintiff who was working as a trishaw rider was awarded loss of future earnings. To emphasize, it is to prevent these types of awards that Parliament acted. That is why you find the fixed formula for the multiplier in the amendments.

[10] It is a cardinal guide of statutory interpretation that when a statute lays down a specific code or formula to meet a particular mischief of the common law, it is not open to the courts to treat themselves as at liberty to continue to apply the common law in disregard of statute. The point was made in as plain language as can be by Lord Herschell in *The Governor andCompany of the Bank of England v Vagliano Brothers* [1891] AC 107 (atpp144–145):

> I think the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view.
>
> If a statute, intended to embody in a code a particular branch of the law, is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it,

A the law should be ascertained by interpreting the language used instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, … .

[11] It is this very principle that the majority in *Chan Chin Ming* breached when purporting to interfere with the pre-determined statutory formula B applicable in the calculation of loss of earnings in dependency and personal injury claims. With great respect, the majority in *Chan Chin Ming* were exercising legislative and not interpretive jurisdiction.

[12] There is a further point that the majority in *Chan Chin Ming* overlooked. The language of the statute is imperative. It says that 'the number of years' C purchase *shall* be 16. The mandatory tenor of the phrase employed by Parliament to convey its message excludes any pretended exercise of judicial power to substitute some other multiplier for that intended. The result may be unfair to insurers of vehicles. But that is irrelevant. As Lord Macnaghten said in *Vacher & Sons, Limited v London Society of Compositors* [1913] AC 107, at p118:

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"Some people may think the policy of the Act unwise and even dangerous to the community. Some may think it at variance with principles which have long been held sacred. But a judicial tribunal has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. *The duty of the court, and its only duty, is to expound the language of the Act in accordance* E *with the settled rules of construction*. It is, I apprehend, as unwise as it is unprofitable to cavil at the policy of an Act of Parliament, or to pass a covert censure on the Legislature. (Emphasis added.)

[13] These are some of the matters that led Edgar Joseph SCJ to enter a powerful dissent in these terms pp 248–249:

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I regret I have to part company with the majority of the members of this court and say that I cannot accede to the submission of counsel for the defendants regarding this part of the case as, to do so, would be to fly in the face of the mandatory provisions of proviso (d) to s 7(3)(iv) of the Act, which fixes the multiplier at 16 years in cases such as the present.

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To my mind, it is manifestly clear, that in enacting the detailed provisions of proviso (d) to s 7(3)(iv), Parliament had intended to take away the discretion of the court to select the appropriate multiplier, in assessing loss of earnings of a deceased person in respect of any period after his death, for purposes of a claim for loss of support under s 7(1).

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If counsel for the defendants were correct in his contentions, regarding this part of the case, then the court could also, in an appropriate case, in the exercise of its discretion:

(1) in the case of a deceased person of the age of 30 years and below, increase the multiplier beyond 16 years; or

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(2) in the case of a deceased person of the age range extending between 31years and 54 years, ignore the statutory formula provided and select an appropriate multiplier; or

(3) in the case of a deceased person of the age of 55 years and above, select an appropriate multiplier, when assessing loss of earnings in respect of the period after the death, although proviso (d) impliedly debars the court altogether from making any such award.

In other words, the effect of counsel for the defendants' submissions, if upheld, would mean that the court could, in any of the above cases, rewrite the statute, or brush aside explicit statutory provisions and select, in the exercise of its discretion, a suitable multiplier. This proposition is, in my view, quite untenable, and has only to be stated to be rejected, bearing in mind that when a question of statutory interpretation arises, the duty of the court is simply to give effect to the will of Parliament as expressed in the law.

[14] We gratefully adopt in entirety the views expressed by that very learned judge.

[15] Our attention was drawn to in *Takong Tabari v Government of Sarawak & Ors and another appeal* [1998] 4 MLJ 512 where this court applied the majority judgment in *Chan Chin Ming*. A careful reading of the judgment in *Takong Tabari* makes it clear that no argument as to the correctness of the decision in *Chan Chin Ming* was ever addressed to this court. That is not the case here. In the instant appeals counsel before us mounted a frontal attack on correctness of the majority judgment in *Chan Chin Ming*. We therefore merely happen to be more fortunate than the court in *Takong Tabari* to deal with the assault on *Chan Chin Ming*.

[16] Having come to the conclusion that *Chan Chin Ming* was wrongly decided by the majority in that case, are we entitled to depart from it? We think we are. *Chan Chin Ming* was decided before the establishment of this court. It was decided at a point of time when the High Court had original jurisdiction over personal injury and fatal accident claims. Appeals were preferred to the Supreme Court which stood at the apex of the judicature. That is not the case today. All personal injury and fatal accident claims are now solely within the jurisdiction of the subordinate courts. Appeals are to the High Court and finally to this court. We therefore now stand at the apex in respect of these claims. If a decision – and more so as here a majority decision – of the former Supreme Court is obviously wrong, then it is our plain duty to say so. It will, with respect, be an abdication of our solemn duty to simply fold our arms in abject submission and permit an erroneous statement of the law to continue to form part of our jurisprudence especially when it results in an injustice to a litigant. We draw support of the view we take of the matter from the fairly recent case of *Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd, The Great Peace* [2002] 4 All ER 689 where the English Court of Appeal declined to follow its earlier decision in *Solle v Butcher* [1949] 2 All ER 1107 on the issue of the existence of a jurisdiction in equity to grant rescission of a contract untainted by common mistake at common law. It is of importance to note that the parameters of binding precedent laid down in *Young v Bristol Aeroplane Co Ltd* [1944] 2All ER 293 did not prevent the Court in *Great Peace Shipping* from departing from its earlier decision. The cases before us are much stronger in the sense

that the majority in *Chan Chin Ming* literally re-wrote the statute that was before them merely for interpretation.

[17] With that we now turn to address each of the two appeals before us on their respective facts.

[18] In *Ibrahim bin Ismail v Hasnah bte Puteh* (Civil Appeal No A–04–15 of 1999), there is an appeal and a cross appeal. The appeal is by the defendant in the subordinate court. It is directed against the failure by the trial and intermediate appellate courts to reduce the damages for bereavement despite a finding of contributory negligence against the deceased. It is trite that the effect of a finding of contributory negligence is to entitle a defendant to a proportionate reduction of the damages awarded to a plaintiff. The courts below were therefore plainly wrong. The appeal is irresistible. Counsel for the respondent (plaintiff at first instance) did not resist it. We therefore allowed it. The plaintiff's cross appeal relates to the *Chan Chin Ming* point. The trial court applied the multiplier of 16 years prescribed by s 7(3)(iv)(d). On appeal by the defendant the High Court reversed and reduced the multiplier. The plaintiff now seeks a restoration of the original award.

[19] In our judgment, for the reasons given, the trial judge was quite right in what he did. We do not read the majority in *Chan Chin Ming* as saying that there must be a reduction of the multiplier in every case. All it says is that despite the imperative statutory direction it was still possible in a given case for a court to substitute a multiplier of less than 16. Therefore, with respect, there was no duty on the High Court to reverse in any event and it would not have infringed *stare decisis* if it had declined interference.

[20] Like the appeal, the cross appeal is equally irresistible. We allowed it.

[21] The other appeal, *Lai Wai Keet & Anor v Looi Kwai Fong* (A–04–27 of 1999) concerns a personal injury claim. The sessions court made an award for loss of future earnings by applying the statutory multiplier set out in section 28A(2)(d)(i). The High Court intervened and further reduced the multiplier by a further 1/3. It relied on both *Chan Chin_Ming* and *Takong Tabari*. The plaintiff appealed to us. We agree with his counsel's argument that it was illegal for the High Court to make a further deduction from the imperative figure. The appeal was accordingly allowed.

[22] By consent, we made no order as to costs in both appeals.

[23] There is one final matter that needs to be addressed. It is settled beyond doubt that when calculating the loss of dependency under s 7 or the loss of future earnings under s 28A, the prescribed statutory multiplier is to be applied directly. Resort to the annuity tables previously used is no longer permissible. For, when statute prescribes a multiplier, it is to be applied directly. That was settled by the Supreme Court in *Marappan & Anor v Siti Rahmah bte Ibrahim* [1990] 1 MLJ 99. See also *Hum Peng Sin v Lim Lai Hoon & Anor* [2001] 4 MLJ 232. There should be no doubt about it now.

Appeal and cross appeal allowed in the first case and appeal allowed in the second case.

Reported by Andrew Christopher Simon